

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

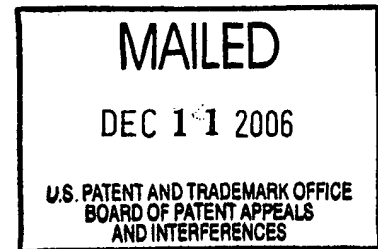
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte GEORGE NICHOLS,
SEIJI KAWAKAMI and JAMES A. WEST

Appeal No. 2006-2944
Application No. 09/458,248

HEARD: November 16, 2006



Before MARTIN, JERRY SMITH and BARRY, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-29, which constitute all the claims pending in this application.

The disclosed invention pertains to an acoustic assembly including an electroacoustical transducer and an acoustic element, separate from the electroacoustical transducer, and arranged to be installed as an element of a vehicle pillar.

Representative claim 1 is reproduced as follows:

1. An acoustic assembly comprising

an electroacoustical transducer; and

an acoustic element, separate from said electroacoustical transducer, designed and constructed to improve the acoustic performance of said electroacoustical transducer;

said acoustic assembly designed and constructed to be an element of a vehicle pillar.

The examiner relies on the following references:

Atkinson	1,930,577	Oct. 17, 1933
----------	-----------	---------------

Doug Newcomb, Car Stereo, October 1999, pages 20-25.

The following rejections are on appeal before us:

1. Claims 1-3, 5, 6, 8, 10-14, 16, 17 and 20-24 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Newcomb.
2. Claims 4, 7, 9, 15, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Newcomb taken alone.
3. Claims 25, 27 and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Atkinson.
4. Claims 26 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Atkinson taken alone.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon supports each of the examiner's rejections of the claims on appeal. Accordingly, we affirm.

We consider first the rejection of claims 1-3, 5, 6, 8, 10-14, 16, 17 and 20-24 as being anticipated by Newcomb. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of

performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983).

The examiner has indicated how the invention of these claims is deemed to be fully met by Newcomb [answer, pages 3-4]. Specifically, the examiner reads the claimed electroacoustical transducer on the tweeter of Newcomb, the claimed acoustic element on the waveguide or grille of Newcomb, and the claimed vehicle pillar on the A-pillar of Newcomb. Appellants argue that Newcomb only discloses using the A-pillar for the mechanical function of supporting the tweeter and completely fails to disclose any acoustic function of the A-pillar. Appellants also argue that Newcomb fails to disclose the waveguide being an acoustic element separate from the electroacoustical transducer [brief, pages 5-7]. The examiner responds that a waveguide or grille is structured and capable of improving sound performance, and therefore, is an acoustic element. The examiner also notes that the grille of Newcomb is separate from the tweeter as claimed [answer, pages 7-8].

We will sustain the examiner's rejection of claims 1-3, 5, 6, 8, 10-14, 16, 17 and 20-24 as being anticipated by Newcomb. We agree with the examiner that the claimed invention can be read on Newcomb in the manner proposed by the examiner. Appellants' argument that the A-pillar of Newcomb has no acoustic function is not persuasive because claim 1 does not require that the A-pillar have an acoustic function. Claim 1 only requires that the acoustic assembly be an element of a vehicle pillar. The acoustic assembly of Newcomb (tweeter plus grille) is clearly constructed as an element of the A-pillar as found by the examiner. The examiner has also found that the grille of Newcomb is a separate element from the tweeter. Appellants' bare argument that Newcomb fails to disclose that the waveguide is an acoustic element separate from the transducer is not persuasive because appellants have failed to address the findings of the examiner (regarding the tweeter and the grille) in support of the rejection. Therefore, neither of appellants' arguments is persuasive of error in the rejection. Although there may be reasons why an artisan would not consider the grille in Newcomb to be an acoustic

element as recited in claim 1, appellants have failed to present any rebuttal arguments to the findings made by the examiner in this regard. We also note for the record that appellants' representative at the oral hearing in this case admitted that claims 11-13 and 15 were anticipated by Newcomb.

We now consider the rejection of claims 4, 7, 9, 15, 18 and 19 under 35 U.S.C. § 103 based on Newcomb taken alone. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). The examiner must articulate reasons for the examiner's decision. In re Lee, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). In particular, the examiner must show that there is a teaching, motivation, or suggestion of a motivation to combine references relied on as evidence of obviousness. Id. at 1343, 61 USPQ2d at 1433-34. The examiner cannot simply reach conclusions based on the examiner's own understanding or experience - or on his or her assessment of what would be basic knowledge or common sense. Rather, the examiner must point to some concrete evidence in the record in support of these findings. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Thus the examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the examiner's conclusion. However, a suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. In re Kahn, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (citing In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000)). See also In re Thrift, 298 F. 3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002).

These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence.

Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)(2004)].

The examiner has indicated how the invention of these claims is deemed to be rendered obvious by the teachings of Newcomb [answer, pages 5-6]. With respect to each of these claims, the examiner finds that although Newcomb fails to disclose a claimed element, the claimed element was well known in the art and the artisan would have been motivated to modify Newcomb to achieve the recognized advantages of the well known element. In addition to the arguments considered above, appellants argue that the motivation to modify the prior art proposed by the examiner does not come from the prior art as required [brief, pages 9-10]. The examiner responds by citing additional references to support the examiner's findings that the additionally claimed elements were well known in the art. The examiner also points out that the motivation is included in the rejection and that such motivation does not have to expressly come from the cited reference [answer, pages 8-9]. Appellants respond that the examiner has relied on case law that was distinguished in the brief [reply brief, page 6].

We will sustain the examiner's rejection of claims 4, 7, 9, 15, 18 and 19. Although we encourage the examiner to cite references in the statement of the rejection rather than rely on what is well known in the art, the reliance on teachings that are, in fact, well known can support a rejection. We note that rather than rebut the merits of the examiner's findings in support of obviousness, appellants have chosen to rely on a technical argument that the examiner's findings do not come from the cited reference. As

we noted above, however, a suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art (citations indicated above). The examiner's rejection with respect to each of these claims has explained why the artisan would have been motivated to modify the teachings of Newcomb. We agree with the examiner that the specific features of the waveguide recited in these claims were well known in the art and that the advantages of these features were also well known to the artisan. Therefore, we find that the examiner has established at least a prima facie case of obviousness which has not rebutted by appellants.

We now consider the rejection of claims 25, 27 and 29 as being anticipated by Atkinson. The examiner has indicated how the invention of these claims is deemed to be fully met by Atkinson [answer, pages 4-5]. Specifically, the examiner reads the claimed sound sources on speaker 11 and vents 15 and 20 of Atkinson, the claimed port openings on vents 15 and 20 of Atkinson, and the claimed waveguide opening on vents 15 and 20 of Newcomb. Appellants argue that Atkinson fails to disclose an automobile pillar, let alone an automobile pillar comprising a plurality of sound sources as claimed. Appellants also argue that the vents of Atkinson are not ports or waveguide exits as claimed [brief, pages 7-8]. The examiner responds that Atkinson discloses an automobile pillar and that the venting holes 15 and 20 are balancing acoustic pressure and emitting sound which makes them sound sources as well [answer, page 8].

We will sustain the examiner's rejection of claims 25, 27 and 29 as anticipated by Atkinson. Atkinson discloses that the sound assembly is attached to an automobile pillar [see Figure 3]. We agree with the examiner that the vents of Atkinson can be considered to be port or waveguide openings when those terms are given their broadest reasonable interpretation. Appellants have offered no explanation as to why the vents of Atkinson are not port or waveguide openings. Appellants have also offered no explanation as to

why the venting holes in Atkinson cannot be considered sound sources in the manner proposed by the examiner. Therefore, appellants have failed to rebut the specific findings made by the examiner in support of the rejection.

We now consider the rejections of claims 26 and 28 under 35 U.S.C. § 103 based on Atkinson taken alone. The examiner has indicated how the invention of these claims is deemed to be rendered obvious by the teachings of Atkinson [answer, pages 6-7]. With respect to each of these claims, the examiner finds that although Atkinson fails to disclose a claimed element, the claimed element was well known in the art and the artisan would have been motivated to modify Atkinson to achieve the recognized advantages of the well known element. In addition to the arguments considered above, appellants argue that the motivation to modify the prior art proposed by the examiner does not come from the prior art as required [brief, pages 10-12]. The examiner responds by citing additional references to support the examiner's findings that the additionally claimed elements were well known in the art. The examiner also points out that the motivation is included in the rejection and that such motivation does not have to expressly come from the cited reference [answer, pages 8-9]. Appellants respond that the examiner has relied on case law that was distinguished in the brief [reply brief, page 6].

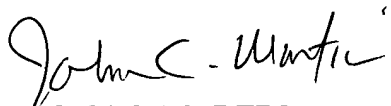
We will sustain the examiner's rejection of claims 26 and 28. We note again that rather than rebut the merits of the examiner's findings in support of obviousness, appellants have chosen to rely on a technical argument that the examiner's findings do not come from the cited reference. As we noted above, however, a suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art (citations indicated above). The examiner's rejection with respect to each of these claims has explained why the artisan would have been motivated to modify the teachings of Atkinson. We agree with the examiner that the specific feature of the plurality of sound sources recited in these claims was well known

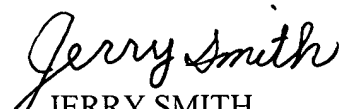
in the art and that the advantages of this feature were also well known to the artisan. Therefore, we find that the examiner has established at least a prima facie case of obviousness which has not rebutted by appellants.

In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-29 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED


JOHN C. MARTIN
Administrative Patent Judge


JERRY SMITH
Administrative Patent Judge


LANCE LEONARD BARRY
Administrative Patent Judge

)
)
)
)
)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES

Appeal No. 2006-2944
Application No. 09/458,248

FISH & RICHARD, P.C.
P. O. BOX 1022
MINNEAPOLIS, MN 55440-1022